(28)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Appeal of 105 of 2006

APPELLANT
IN JAIL — Dinesh Kumar

Versus

RESPONDENT — State of Chhattisgarh

J U D G M E N T

POST FOR 11/6/2007

Sd/-
Dhirendra Mishra
Judge

(29)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Appeal of 105 of 2006

APPELLANT IN JAIL	Dinesh Kumar, S/o Ramesh Chandra Meshram, aged about 30 years, residence of Rajeev Nagar, Durg, Distt-Durg (C.G.)
	Versus
RESPONDENT	State of Chhattisgarh, through the District Magistrate, Durg.

Present:

Mrs. Indira Tripathi, learned counsel for the appellant.

Mr. G.K. Beriwal, learned Dy. A.G. with Mr. Sudhir Bajpai, learned Dy. G.A. for the State/respondent.

JUDGMENT

(Delivered on 11 June 2007)

Dhirendra Mishra, J

The appellant has preferred this appeal under Section 374(2) of the Code of Criminal Procedure against the impugned judgment of conviction and order of sentence dated 8th February 2006 passed in S.T.No.246/05, whereby the learned Sessions Judge, Durg has convicted him under Sections 498-A and 304-B of the Indian Penal Code and sentenced him to undergo R.I. of one year, to undergo R.I. of seven years and pay a fine of Rs.500/- respectively, in default of payment of fine to further undergo R.I. for two months. Both the sentences are directed to run concurrently.

2. Case of the prosecution, in brief, is that the appellant was married to deceased Kalpana, daughter of Sudama Uike (PW-5) on 2.5.2004 who committed suicide by setting herself ablaze on 17.4.2005 in her matrimonial house. After she sustained burn injuries, she was admitted in District Hospital, Durg where she died while undergoing the treatment on the same day. On the

basis of Merg intimation of Ex.P/20 Merg No.25/05 was recorded and on merg inquiry it was revealed that the appellant and his mother used to harass the deceased for not giving dowry of Rs.30,000/-, therefore, she committed suicide by setting herself ablaze, sustained 100% burn injuries and succumbed to the same during treatment. Inquest of Ex.P/2 was prepared in the presence of witnesses. Dead body of the deceased was sent for autopsy to Govt. Main Hospital, Durg vide Ex.P/6 where Dr. C.S. Morey (PW-17) conducted postmortem on 18.4.2005 and gave his report of Ex.P/21. Spot map of Ex.P/7 was also prepared. Burnt clothing of the deceased, match box cover and burnt matchstick etc. were taken into possession vide Ex.P/8. During merg investigation statements of witnesses K. Ganga Meshram, Smt. Janabai, Shivkumar Sahu, Shivcharan Nishad and Dinesh Kumar were recorded and thereafter, First Information Report under Section 304 B of the IPC was recorded vide Ex.P/9. Seized articles were sent for chemical analysis to Forensic Science Laboratory, Raipur vide Ex.P/13 and the report of F.S.L. is Ex.P/15.

3. After completing investigation charge sheet was filed in the Court of Judicial Magistrate First Class, Durg and the same was committed to the Court of Sessions Judge, Durg for trial. Charge under Sections 304-B and 498-A of the IPC was framed against the appellant and co-accused Kastura Bai, mother of the appellant, who abjured their guilt. Prosecution in order to establish the charge against the accused persons examined 17 witnesses in all. Thereafter, statements of the accused were recorded under Section 313 of the Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case and pleaded innocence and false implication. The appellant also pleaded that he never harassed Kalpana in the name of dowry nor ever beat her, she did not want to live with his mother as she was by nature stubborn and she herself set her ablaze. Similar was the defence plea of his mother Kastura Bai.

4. Learned Sessions Judge, after hearing counsel for the respective parties, convicted and sentenced the accused/appellant as mentioned above.

5. Learned counsel for the appellant contended that admittedly the incident occurred on 17.4.2005, however, offence was registered only on 6.7.2005 i.e. almost three months after the incident and no explanation for delay in lodging the F.I.R. has been offered by the prosecution. He further submits that no independent witness who resides in the vicinity, has been examined. Diary statements of the witnesses Sudama Uike, Mukta Uike, Mamta, Ku. Rachna, who are father, mother, aunty and sister of the deceased, respectively have been recorded on 6.7.2005. He further submits that allegation against the accused persons was that they harassed the deceased as demand of Rs.30,000/- to Rs.40,000/- for repaying the loan, which they had taken, was not satisfied by her parents, thus there is no allegation of demand of dowry and in the absence of such allegation, provisions of Section 304-B are not attracted. Only general and omnibus allegations have been made by the witnesses against the present appellant, his crippled mother Kastura Bai as also against the sister-in-law of the deceased, however, in the same offence mother of the appellant has been acquitted and sister-in-law of the deceased has not even been prosecuted.

6. Reliance is placed on the judgments of the Hon'ble Supreme Court reported in **2007(1) Supreme 21** in the matter of **Appasaheb & Anr. Vs. State of Maharashtra** and **(2001) 8 SCC 633** in the matter of **Satvir Singh and others Vs. State of Punjab and another.**

7. On the other hand, learned counsel for the State supported the impugned judgment of trial Court.

8. I have heard learned counsel for both the parties and perused the material available on record.

9. It is not disputed that the appellant married deceased Kalpana on 2.5.2004, who died on 17.4.2005 while undergoing treatment in the hospital for 100% burn injuries sustained in her matrimonial house, within a year of her marriage. PW-17 Dr. C.S. Morey, Sr. Medical Officer has conducted the postmortem jointly with Dr. P. Akhtar and has proved the postmortem report of Ex.P/21, in which he has mentioned that smell of kerosene oil was emanating from her body, the whole body was burnt, turned blackish and stiff and burnt skin was peeling off from the whole body except the face and private parts. Carbon particles were present inside her nose and trachea, body was 100% burnt, it was deep burnt and a case of ante-mortem burn. In their opinion, cause of death was shock due to 100% burn and she died 36 hours prior to the time of postmortem.

10. Prosecution in order to establish the circumstances under which the deceased sustained burn injuries and died, has examined her father Sudama Uike (PW-1) who has stated that deceased Kalpana was married to the appellant on 2.5.2004 at Gondia and thereafter, she came to Durg at her matrimonial house with accused Dinesh. After two months of the marriage, he brought her Gondia. He used to talk with his daughter through telephone in the meanwhile. On telephone, his daughter used to complain that her mother-in-law, husband and sister-in-law harass, beat and abuse her. When for the first time he had brought her to Gondia, she told that her husband and mother-in-law ask her to bring money from her parental house as they are indebted to the extent of Rs.30,000/- to Rs. 40,000/- due to construction of house for repayment of loan. However, he used to explain his daughter that he is the only earning member in the family of five and as such, he is not in a position to give money. Dinesh and his friend Tinku took the deceased back and he had no talk with them. On the eve of Pola he again brought his daughter to home and this time she told that she will return only after money is given to her as her mother-in-law, husband and sister-in-

law harass and beat her. After the festival accused Dinesh and his friend Tinku came to take Kalpana back and at that time, he had given Rs.10,000/- to her daughter at the time of her departure. After Deepawali, his daughter Rachna, his son Yuvraj, Mamta wife of his younger brother Yadavrao and Sunil, friend of Yuvraj went to Durg and brought back her daughter to Gondia. This time also she complained that the accused persons are harassing her excessively for money, her husband, mother-in-law and sister-in-law demand money on the pretext that they have to construct a house. After four days of Deepawali accused Dinesh and his friend Tinku came to take Kalpana, at that time also he had given clothing to the appellant and deceased and Rs.500/- cash on their departure. During his stay, the appellant after consuming liquor stayed in the house of his sister, which is situated in front of their house. About one month after going to her matrimonial house his daughter again told him over telephone that her in-laws are harassing her too much for money, he sent his wife and sister of the accused namely Chandrakala to the house of the accused at Durg to convince them not to harass her daughter. Thereafter, 15 days before Holy festival her daughter Kalpana telephoned and requested him to come to Durg and take her back as her husband, mother-in-law and sister-in-law were committing *Marpeet* with her, therefore, he sent his son Yuvraj, his friend Sunil, his daughter Rachna and Mamta to Durg to bring Kalpana back to her parental house. On 2nd April 2005 accused Dinesh came Durg along with his friend Tinku and took Kalpana with a promise that after returning Durg, they shall live in a separate house and also purchase T.V. and shall not harass her. His friend Tinku also assured that her in-laws shall not harass and beat Kalpana henceforth. However, on 17.4.2005 Chandrakala, sister of the appellant, who resides in Gondia, came to their house at about 9.00 in the morning and informed that Kalpana has burnt, he and his wife have been asked to come to Durg with money. Thereupon, he along with 10-15 persons reached Durg at 4.00 in the evening, where they were informed that dead body of Kalpana is lying in

Mortuary for postmortem. Ornaments of the deceased were missing from her dead body, his daughter has been done to death by the accused persons by setting her ablaze for dowry. In cross-examination he has stated that during negotiation of marriage, the appellant and others had demanded dowry which was refused by him and thereafter, after talking to their sister Chandrakala they returned back and said that they have approved the girl, they are ready for marriage and they don't want dowry. He has admitted that whatever was given at the time of marriage, was given voluntarily and not on demand. He was not aware before marriage that Kastura Bai is crippled and not able to walk on her feet and because of the condition of Kastura Bai responsibility of the deceased was enhanced, however, he has denied that his daughter used to complain that she is required to work more because of the crippled mother-in-law. He has further admitted that he knew that his son-in-law was driver, however, he did not know about his income though he thought that the accused must be earning so much that he can take care of a family of four properly. He has admitted that his daughter had informed him that the accused used to say that he had to run the family by Rs.500/- only as he is indebted. However, he has denied that the accused used to give his daughter Rs.20/- per day separately. He has admitted that his daughter never complained that his husband consumes liquor. He has further admitted that his statement regarding dowry was recorded after 1 ½ to 2 months of the incident because the officer who was investigating the matter had gone in connection with marriage of his daughter.

11. PW-2 Smt. Mukta Uike, mother of the deceased, has also deposed in the similar line. She has stated that her daughter complained that her husband and the mother-in-law beat her in the name of dowry for bringing money from her parental house. She has also stated that her sister-in-law also beats her for money. In whole of her statement she has narrated that her daughter used to inform her that the appellant, his mother and sister harass and beat her in the name of demand of dowry. After learning that her

daughter had burnt, when they reached Durg, she saw her daughter dead. In the cross-examination she has admitted that whatever was given at the time of marriage was given voluntarily. She has also admitted that whatever was given to her son-in-law was given by them on their own. However, she has denied the suggestion that Kalpana was never harassed in the name of dowry and money and she was never beaten. Similar is the statement of Mamta, aunty of the deceased, who has stated that whenever Kalpana came to Gondia, she used to complain that she is harassed for money by the accused persons and she used to weep also. In paragraph 2 she has stated that on the eve of Holy festival she along with Rachna, her brother Yuvraj and his friend Sunil had gone to bring Kalpana to Durg, at that time Kastura had told us that she would return only with money or else she should not return, whereupon they had stated that they are poor people, how can they satisfy their regular demands. This witness has also admitted that at the time of marriage whatever was given to the daughter Kalpana was given voluntarily and even on the eve of festival whatever was given was given voluntarily. PW-4 Ku. Rachna, sister of the deceased, has also stated that deceased Kalpana used to tell her that whenever she came to Gondia accused persons harass her in the name of demand of dowry.

12. Station House Officer, Y.S. Mishra (PW-10) the investigating officer of the case, has stated that during merg investigation he had recorded the statements of witnesses Ku. Ganga Meshram, Smt. Janabai, Shivkumar Sahu, Shivcharan Nishad and Dinesh Kumar and on merg inquiry he found that offence under Section 304-B of IPC has been committed and merg was recorded on 6.7.2005 vide Ex.P/9. In the cross-examination in paragraph 9 he has further stated that apart from the persons whom he has named above, he had also recorded the statements of Sudama Uike, Mukta, Ku. Rachna, Smt. Mamta and Shrawan during merg inquiry, however, their statements have not been annexed with the charge sheet, they must be in the merg diary.

13. It is true that the statements of the witnesses were recorded only after the registration of crime i.e. on 6.7.2005 and for delay in registering the offence has not been properly explained. The investigating officer has claimed that the statements of witnesses who have been examined during trial, were also recorded earlier during merg inquiry, however, the same could not be brought on record. From the statement of the Sudama Uike, father of the deceased, as also that of Mukta Uike, mother of the deceased, who are witnesses of negotiation of marriage, it is clear that initially the family members of the appellant had demanded dowry which was flatly refused by them and thereafter, they had agreed for marriage without dowry and whatever was given at the time of marriage was voluntarily given without any demand.

14. From perusal of the above evidence it appears that financial position of the appellant's family was not sound and they were indebted to the tune of Rs.30,000/- to Rs.40,000/- and they were finding it difficult to run their household expenses. Only a sum of Rs.500/- was given to the deceased to run the family, as a result of which there was tension in the family. It also appears that they expected some financial assistance from the parents of the deceased as they had to repay the loan to the tune of Rs.30,000/- to Rs.40,000/-, which they had borrowed for construction of their house. However, the deceased was not able to bring the above money due to financial constraints of her parents. Though other witnesses have stated in their depositions that demands were made in connection with dowry.

15. In the matter of Appasaheb & Anr. Vs. State of Maharashtra (supra) the Hon'ble Apex Court while dealing with dowry death has held in paragraph 9 as under:

> "9. Two essential ingredients of section 304-B IPC, apart from others, are (i) death of woman is caused by any burns or bodily injury or occurs otherwise, then under normal circumstances, and (ii) woman is subjected to cruelty or harassment by her husband or

any relative of her husband for, or in connection with, any demand for "dowry". The explanation appended to sub-section (1) of Section 304-B IPC says that "dowry" shall have the same meaning as in Section 2 of Dowry Prohibition Act, 1961.

Section 2 of Dowry Prohibition Act, reads as under:-

"2. *Definition of "dowry"*- In this Act "dowry" means any property or variable security given or agreed to be given either directly or indirectly-

(a) by one party to a marriage to the other party to the marriage; or

(b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person, at or before or any time after the marriage in connection with the marriage of the said parties, but does not include doer of mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies.

In view of the aforesaid definition of the word "dowry" any property or valuable security should be given or agreed to be given either directly or indirectly at or before or any time after the marriage and in connection with the marriage of the said parties. Therefore, the giving or taking of property or valuable security must have some connection with the marriage of the parties and a co-relation between the giving or taking of property or valuable security with the marriage of the parties is essential. Being a penal provision it has to be strictly construed. Dowry is a fairly well known social custom or practice in India. It is settled principle of interpretation of Statute that if the Act is passed with reference to a particular trade, business or transaction and words are used which everybody conversant with that trade, business or transaction knows or understands to have particular meaning in it, then the words are to be construed as having that particular meaning. (*See Union of India v. Garware Nylons Ltd, AIR 1996 SC 3509) AND Chemicals and Fibers of India v. Union of India, AIR 1997 SC 558).* A demand for money on account of some financial stringency or for meeting some urgent domestic expenses or for purchasing manure cannot be termed as a demand for dowry as the said word

> is normally understood. The evidence adduced by the prosecution does not, therefore, show that any demand for 'dowry' as defined in Section 2 of the Dowry Prohibition Act, was made by the appellants as what was allegedly asked for was some money for meeting domestic expenses and for purchasing manure. Since an essential ingredient of Section 304-B IPC viz. demand for dowry is not established, the conviction of the appellants cannot be sustained."

16. In the instant case also, general and omnibus allegations have been made against the appellant and his family members including Kastura Bai, mother of the appellant that they harass and beat deceased Kalpana in the name of demand of dowry. However, from the evidence available on record it is clear that in a period of less than one year, on several occasions of festivals family members of the deceased had gone to Durg to bring deceased back to Gondia and on each occasion accused had come to Gondia to bring back his wife. Defence of the appellant that responsibility of running household expenses fell upon the deceased immediately after marriage as his mother was crippled and immobile, her trouble was further compounded due to financial constraints as she had to run the family with a peltry sum of Rs.500/-, as a result of which the deceased started insisting separate living and she herself set her ablaze, appears to be probable. There is no evidence on record that dowry as defined in Section 2 of Dowry Prohibition Act was given or agreed to be given at or before or any time after the marriage and in connection with marriage of the said parties, therefore, the allegation of demand of money by the appellant and his family members for repaying the loan, cannot be termed to be demand of dowry within the meaning of Section 304-B of the IPC. The Court below was not justified in holding the appellant guilty of offence under Section 304-B of the IPC, more so when the allegation of harassment by co-accused Kastura Bai, has been disbelieved and she has been acquitted by extending benefit of doubt on the ground that she was not able to walk as she was crippled and could not harass or beat the deceased.

17. However, considering the evidence available on record that the deceased was harassed in the name of demand of money for repayment of loan taken by the appellant and his family members for construction of house, conviction of the appellant under Section 498-A of the IPC cannot be faulted.

18. In the result, the appeal is partly allowed. Conviction of the appellant under Section 498-A of the IPC and sentence of one year R.I. imposed under that section is maintained. Conviction of the appellant under Section 304-B of the IPC and sentence of seven years' R.I. and fine imposed under that section, are set aside. It is stated that the appellant is in jail since 10.7.2005 and as such, has completed the jail sentence imposed upon him, therefore, he be set at liberty forthwith, if not required in any other case.

Sd/-
Dhirendra Mishra
Judge